

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF LAMAR, COLORADO  
PROHIBITING THE OPERATION OF MEDICAL MARIJUANA BUSINESSES AND  
AMENDING THE LAMAR MUNICIPAL CODE BY THE ADDITION OF A NEW  
SECTION PROHIBITING CERTAIN USES RELATING TO MARIJUANA**

WHEREAS, in November 2000 Colorado voters approved Amendment 20 (Article XVIII, section 14) to the Colorado Constitution. Amendment 20 concerns the possession and use of certain quantities of marijuana for the treatment of certain debilitating medical conditions.

WHEREAS, in December 2009 the City Council as an exercise of its police powers pursuant to and in accordance with the City Charter and the authority granted it in Article XX of the Colorado Constitution adopted an ordinance which declared a ninety (90) day moratorium on the licensing, permitting and operation of medical marijuana businesses in the City.

WHEREAS, in April 2010 the City Council as an exercise of its police powers pursuant to and in accordance with the City Charter and the authority granted it in Article XX of the Colorado Constitution adopted an ordinance which extended the moratorium until December 31, 2010 on the licensing, permitting and operation of medical marijuana businesses in the City.

WHEREAS, in June of 2010 Governor Ritter signed into law House Bill 10-1284 which among other things authorized the City to adopt an ordinance to license, regulate or prohibit the cultivation and/or sale of medical marijuana. C.R.S. 12-43.3-103(2). The law further allows the City to either by a majority of registered electors of the City voting at a regular election or a majority of the City Council to vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations and medical marijuana manufacturers.

WHEREAS, the City of Lamar, in the County of Prowers, and State of Colorado (the "City"), is a home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City Charter.

WHEREAS, under the Colorado Medical Marijuana Code, 12-43.3-101 C.R.S. *et. seq.* a political subdivision of the State may *inter alia* act to preclude the operation of medical marijuana businesses in a community. Pursuant to 12-43.3-106 C.R.S. a City, by a majority of the members of the governing body may vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations and medical marijuana infused products manufacturing.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAMAR, COLORADO AS FOLLOWS:**

**Section 1.** Title 6 of the Lamar Municipal Code is amended as follows. Amendments are shown in ALL CAPS (except section designations, which are shown in the actual case as they will appear in the Code).

Title 6 Article 11 Lamar Municipal Code

**6-11-10MEDICAL MARIJUANA**

UNDER THE AUTHORITY GRANTED IN 12-43.3-101 ET. SEQ. C.R.S. AND THE CHARTER OF THE CITY OF LAMAR THIS ORDINANCE IS ADOPTED BY THE CITY COUNCIL AND PROHIBITS CERTAIN BUSINESS AND LAND USES RELATED TO MEDICAL MARIJUANA IN THE CITY AND IN FURTHERANCE OF ITS STATED INTENT, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS.

THE COLORADO MEDICAL MARIJUANA CODE 12-43.3-101 ET. SEQ. AUTHORIZES A REGULATORY STRUCTURE FOR THE RETAIL, SALE, DISTRIBUTION, CULTIVATION AND DISPENSING OF MEDICAL MARIJUANA, MARIJUANA INFUSED PRODUCTS AND OPTIONAL PREMISES CULTIVATION. THROUGH THAT REGULATORY STRUCTURE THE SCOPE AND AUTHORITY OF AMENDMENT 20 TO THE COLORADO CONSTITUTION IS FURTHER DEFINED.

THE COLORADO MEDICAL MARIJUANA CODE ALSO SPECIFICALLY AUTHORIZES THE GOVERNING BODY OF A MUNICIPALITY TO VOTE TO PROHIBIT THE LICENSURE AND/OR OPERATION OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA INFUSED PRODUCTS MANUFACTURING WITHIN THE MUNICIPALITY.

THE COLORADO MEDICAL MARIJUANA CODE ALSO SPECIFICALLY AUTHORIZES A MUNICIPALITY TO PROHIBIT THE OPERATION OF MEDICAL MARIJUANA CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS AND MEDICAL MARIJUANA INFUSED PRODUCTS MANUFACTURERS' LICENSES BASED ON LOCAL GOVERNMENT ZONING, HEALTH, SAFETY AND PUBLIC WELFARE LAWS FOR THE DISTRIBUTION OF MEDICAL MARIJUANA.

AFTER DUE AND CAREFUL CONSIDERATION OF THE COLORADO MEDICAL MARIJUANA CODE, ARTICLE XVIII OF THE COLORADO CONSTITUTION, THE CONTROLLED SUBSTANCE ACT (21 U.S.C. 811), THE COLORADO UNIFORM CONTROLLED SUBSTANCES ACT (18-18-101 C.R.S. ET. SEQ.) AND THE REAL AND POSSIBLE EFFECTS OF CULTIVATION AND DISPENSING OF MARIJUANA AND/OR THE MANUFACTURING AND SALE OF MARIJUANA INFUSED PRODUCTS, THOSE BUSINESSES, OPERATIONS AND LAND USES

HAVE BEEN FOUND TO ADVERSELY AFFECT THE HEALTH, SAFETY AND WELFARE OF THE CITY AND ITS INHABITANTS.

THEREFORE IT IS AND SHALL BE UPON PASSAGE OF THIS ORDINANCE UNLAWFUL FOR ANY PERSON TO OPERATE, CAUSE TO BE OPERATED OR PERMIT TO BE OPERATED A MEDICAL MARIJUANA CENTER, AN OPTIONAL PREMISES CULTIVATION OPERATION OR A MEDICAL MARIJUANA INFUSED PRODUCTS MANUFACTURING OR SALE FACILITY, BUSINESS OR OPERATION RELATED THERETO IN THE CITY AND NO CITY LICENSES SHALL ISSUE FOR THE SAME.

**6-11-20           DEFINITIONS:**

ALL DEFINITIONS PROVIDED IN 12-43.3-101 ET. SEQ. C.R.S. ARE ADOPTED HEREIN UNLESS SPECIFICALLY AMENDED HEREBY.

(1) “*MARIJUANA*” SHALL HAVE THE SAME MEANING AS THE TERM “USABLE FORM OF MARIJUANA” AS SET FORTH IN ARTICLE XVIII, SEC. 14(1)(I) OF THE COLORADO CONSTITUTION OR AS MAY BE MORE FULLY DEFINED IN ANY APPLICABLE STATE LAW OR REGULATION. “MARIJUANA” MAY ALTERNATIVELY BE SPELLED “MARIHUANA.”

(2) “*MEDICAL MARIJUANA*” MEANS MARIJUANA THAT IS GROWN AND SOLD PURSUANT TO THE PROVISIONS OF 12-43.3-101 ET. SEQ. C.R.S. AND FOR A PURPOSE AUTHORIZED BY ARTICLE XVIII, SEC. 14 OF THE COLORADO CONSTITUTION.

(3) “*MEDICAL MARIJUANA CENTER*” MEANS ANY PERSON LICENSED PURSUANT TO 12-43.3-101 ET. SEQ C.R.S. WHO SELLS MARIJUANA IN ANY FORM TO REGISTERED PATIENTS OR TO A PRIMARY CAREGIVER(S) AS DEFINED IN ARTICLE XVIII, SEC. 14 OF THE COLORADO CONSTITUTION, EXCEPT, HOWEVER, A PRIMARY CAREGIVER AS DEFINED HEREIN SHALL NOT BE CONSIDERED A MEDICAL MARIJUANA CENTER.

(4) “*MEDICAL MARIJUANA INFUSED PRODUCT*” MEANS ANY PRODUCT INFUSED WITH OR CONTAINING MARIJUANA THAT IS INTENDED FOR USE OR CONSUMPTION OTHER THAN BY SMOKING, INCLUDING EDIBLE PRODUCTS, OINTMENTS AND TINCTURES.

(5) “*MEDICAL MARIJUANA INFUSED PRODUCT MANUFACTURER*” MEANS A PERSON LICENSED PURSUANT TO 12-43.3-101 ET. SEQ. C.R.S. TO OPERATE A BUSINESS AS DESCRIBED IN 12-43.3-404 C.R.S.

(6) “*MEDICAL USE*” SHALL HAVE THE SAME MEANING AS IS SET FORTH IN ARTICLE XVIII, SEC. 14(1)(B) OF THE COLORADO CONSTITUTION, OR AS

MAY BE MORE FULLY DEFINED IN ANY APPLICABLE STATE LAW OR REGULATION.

(7) “*OPTIONAL PREMISES CULTIVATION OPERATION*” MEANS A PERSON LICENSED PURSUANT TO 12-43.3-101 ET. SEQ C.R.S. TO GROW AND CULTIVATE MARIJUANA FOR A PURPOSE AUTHORIZED BY ARTICLE XVIII, SEC. 14 OF THE COLORADO CONSTITUTION.

(8) “*PATIENT*” HAS THE SAME MEANING AS SET FORTH IN ARTICLE XVIII, SEC. 14(1)(C) OF THE COLORADO CONSTITUTION.

(9) “*PERSON*” SHALL MEAN A NATURAL PERSON, PARTNERSHIP, ASSOCIATION, COMPANY, CORPORATION, LIMITED LIABILITY COMPANY OR OTHER ORGANIZATION OR ENTITY OR A MANAGER, AGENT, OWNER, OFFICER OR EMPLOYEE THEREOF.

(10) “*POSSESS OR POSSESSION*” MEANS HAVING PHYSICAL CONTROL OF AN OBJECT, OR CONTROL OF THE PREMISES IN WHICH AN OBJECT IS LOCATED, OR HAVING THE POWER AND INTENT TO CONTROL AN OBJECT, WITHOUT REGARD TO WHETHER THE ONE IN POSSESSION HAS OWNERSHIP OF THE OBJECT. POSSESSION MAY BE HELD BY MORE THAN ONE PERSON AT A TIME. USE OF THE OBJECT IS NOT REQUIRED FOR POSSESSION.

(11) “*PRIMARY CAREGIVER*” HAS THE MEANING SET FORTH IN ARTICLE XVIII, SEC.14(1)(F) OF THE COLORADO CONSTITUTION AND AS THE SAME MAY BE CLARIFIED OR CONSTRUED BY 12-43.3-101 ET. SEQ. C.R.S.

(12) “*PRODUCE OR PRODUCTION*” MEANS (I) ALL PHASES OF GROWTH OF MARIJUANA FROM SEED TO HARVEST, (II) COMBINING MARIJUANA WITH ANY OTHER SUBSTANCE FOR DISTRIBUTION, INCLUDING STORAGE AND PACKAGING FOR RESALE, OR (III) PREPARING, COMPOUNDING, PROCESSING, ENCAPSULATING, PACKING OR REPACKAGING, LABELING OR RE-LABELING OF MARIJUANA OR ITS DERIVATIVES WHETHER ALONE OR MIXED WITH ANY AMOUNT OF ANY OTHER SUBSTANCE.

### **6-11-30 APPLICABILITY AND EFFECTIVE DATE**

(1) THIS ARTICLE SHALL APPLY TO ALL PROPERTY AND PERSONS WITHIN THE CITY OF LAMAR.

(2) IT SHALL BE UNLAWFUL AND A VIOLATION UNDER THIS CHAPTER FOR A PERSON TO ESTABLISH, OPERATE, CAUSE OR PERMIT TO BE OPERATED, OR CONTINUE TO OPERATE WITHIN THE CITY AND WITHIN ANY AREA ANNEXED TO THE CITY AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, A MEDICAL MARIJUANA CENTER, A MEDICAL MARIJUANA INFUSED

PRODUCT MANUFACTURING FACILITY, AN OPTIONAL PREMISES CULTIVATION OPERATION, OR ANY BUSINESS, FACILITY OR ANY OTHER OPERATION REQUIRING A LICENSE UNDER 12-43.3-101 ET. SEQ. C.R.S.

(3) THE EFFECTIVE DATE OF THIS ORDINANCE SHALL BE DECEMBER 31, 2010.

#### **6-11-40 PATIENTS AND PRIMARY CAREGIVERS**

NOTHING IN THIS CHAPTER SHALL PROHIBIT, REGULATE OR OTHERWISE IMPAIR OR BE CONSTRUED TO PROHIBIT, REGULATE OR IMPAIR THE CULTIVATION, USE OR POSSESSION OF MEDICAL MARIJUANA BY A PATIENT AND/OR BY A PRIMARY CAREGIVER FOR HIS/HER PATIENTS PROVIDED THAT SUCH PATIENT OR PRIMARY CAREGIVER IS ACTING IN ACCORDANCE WITH ALL APPLICABLE PROVISIONS OF ARTICLE XVIII, SEC. 14(1)(C) OF THE COLORADO CONSTITUTION, 12-43.3-101 ET. SEQ C.R.S. AS AMENDED, 25-1.5-106 C.R.S. AS AMENDED, THE REGULATIONS PROMULGATED BY THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE DEPARTMENT OF REVENUE OR ANY OTHER AGENCY WITH REGULATORY AUTHORITY AND THE LAWS OF THE CITY.

#### **6-11-50 PENALTY**

A VIOLATION OF ANY PROVISION OF THIS CHAPTER SHALL CONSTITUTE A MISDEMEANOR OFFENSE PUNISHABLE BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS (\$1,000) OR BY IMPRISONMENT NOT EXCEEDING ONE (1) YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT. A PERSON COMMITTING A VIOLATION SHALL BE GUILTY OF A SEPARATE OFFENSE FOR EACH AND EVERY DAY DURING WHICH THE OFFENSE IS COMMITTED OR CONTINUED TO BE PERMITTED BY SUCH PERSON AND SHALL BE PUNISHED ACCORDINGLY.

**Section 2.** That Section 16-1-10 shall be amended by the addition of a new section to read as follows:

“(93) *MEDICAL MARIJUANA CENTER* SHALL MEAN THE USE OF PROPERTY FOR PROFIT OR OTHERWISE WHICH IS OPERATED BY ANY PERSON INCLUDING, BUT NOT LIMITED TO, A PATIENT OR CAREGIVER AND WHICH IS USED TO CULTIVATE, DISTRIBUTE, TRANSMIT, GIVE, DISPENSE, OR OTHERWISE PROVIDE MARIJUANA IN ANY MANNER TO ANY OTHER PERSON, OTHER PATIENT OR OTHER CAREGIVERS IN ACCORDANCE WITH SECTION 14 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION AND THE IMPLEMENTING STATE STATUTES AND ADMINISTRATIVE POLICIES. AS USED IN THIS SECTION “*PATIENT*” AND “*CAREGIVER*” SHALL HAVE THE MEANINGS PROVIDED IN SECTION 14 OF ARTICLE XVIII OF THE COLORADO

CONSTITUTION AND THE IMPLEMENTING STATE STATUTES AND ADMINISTRATIVE POLICIES.”

**Section 3.** That Section 16-1-10(49) shall be amended to read as follows:

“(49) Medical, dental or health clinic means any building designed for use by one (1) or more persons lawfully engaged in the diagnosis, care and treatment of physical or mental diseases or ailments of human beings, including, but not limited to, doctors of medicine, dentists, chiropractors, osteopaths, optometrists, psychiatrists and podiatrists; and in which no patients are lodged overnight. THIS DEFINITION OF MEDICAL, DENTAL OR HEALTH CLINIC SHALL NOT INCLUDE A MEDICAL MARIJUANA CENTER.”

**Section 4.** That Section 16-1-10(36) shall be amended to read as follows:

“(36) Home occupation means an occupation or activity carried out on the premises which meets all the following conditions:

- a. Only one (1) person other than residents of the premises shall be engaged in such occupation;
- b. The occupation is customarily incidental to the use of the premises as a dwelling place;
- c. Not more than one (1) non-illuminated nameplate is used;
- d. The nameplate shall be attached to the building and shall not exceed one (1) square foot in area;
- e. The occupation does not occupy more than twenty-five percent (25%) of the floor area of one (1) floor of the principal building, when such use is carried on in the principal building;
- f. No display will indicate from the exterior of the building that the premises are being used in part for any purpose other than a dwelling;
- g. There is no commodity displayed or stored on the premises except that which is prepared on the premises;
- h. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses of a person off the lot, if the occupation is conducted in a single-family residence, or outside the individual dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or

television receivers off the premises, or causes fluctuations in line voltage off the premises; and

i. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.

THIS DEFINITION OF HOME OCCUPATION SHALL NOT INCLUDE THE GROWTH OR CULTIVATION OF MARIJUANA FOR MEDICAL PURPOSES AND A MEDICAL MARIJUANA CENTER MAY NOT BE OPERATED AS A HOME OCCUPATION.”

**Section 5.** That Article XVII or Chapter 16 of the Lamar Municipal Code shall be amended by the addition of a new Section 16-17-200 which shall read as follows:

“Section 16-17-200. Medical Marijuana Center.

MEDICAL MARIJUANA CENTERS ARE PROHIBITED WITHIN THE CITY OF LAMAR. A MEDICAL MARIJUANA CENTER MAY NOT BE OPERATED AS A PRIMARY LAND USE, OR AS AN INCIDENTAL ACTIVITY TO ANOTHER LAWFUL LAND USE, OR AS A HOME OCCUPATION.”

**Section 6.** That Article XVII or Chapter 16 of the Lamar Municipal Code shall be amended by the addition of a new Section 16-17-210 which shall read as follows:

“Section 16-17-210. Medical Marijuana Cultivation by a Patient or Caregiver.

MEDICAL MARIJUANA CULTIVATION IS PERMITTED AS A HOME OCCUPATION WITHIN THE CITY OF LAMAR BY A PATIENT OR PRIMARY CAREGIVER PROVIDED, HOWEVER THAT:

a. THERE SHALL NOT BE MORE THAN ONE PRIMARY CAREGIVER PER DWELLING UNIT GROWING, STORING OR PROVIDING MEDICAL MARIJUANA IN ANY FORM TO HIS/HER PATIENTS, AND

b. SUCH GROWING, STORING OR PROVIDING OF MEDICAL MARIJUANA IS CONDUCTED IN ACCORDANCE WITH ARTICLE XVIII, SECTION 14 OF THE COLORADO CONSTITUTION AND 25-1.5-106 C.R.S. AS AMENDED, AND

c. THE PRIMARY CAREGIVER SHALL HAVE NOT MORE THAN SIX PLANTS PER PATIENT WITH A MAXIMUM OF 30 PLANTS FOR FIVE PATIENTS BEING GROWN ON THE PREMISES OF THE DWELLING UNIT AT ANY GIVEN TIME, AND

d. ACCESSORY BUILDINGS SUCH AS DETACHED GARAGE, SHED, GREEN HOUSE OR OTHER STRUCTURE USED FOR GROWING, STORING

OR PROVIDING MEDICAL MARIJUANA MUST COMPLY WITH ALL ZONING BULK STANDARDS AND BUILDING AND FIRE CODE PROVISIONS APPLICABLE THERETO.

**Section 7.** This ordinance is necessary to protect the public health, safety, and welfare of the residents of the City and covers matters of local concern or matters of mixed state and local concern as provided by 12-43.3-101 C.R.S.

**Section 8.** If any provision of this ordinance is found to be unconstitutional or illegal, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severed or severable and shall continue in full force and effect.

**INTRODUCED, READ IN FULL, AND PASSED** on first reading this 8<sup>th</sup> day of November, 2010, in accordance with the City Charter.

CITY OF LAMAR, COLORADO

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ROGER STAGNER, Mayor

ATTEST:

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LINDA WILLIAMS, City Clerk

**INTRODUCED, READ IN FULL AND ADOPTED ON SECOND READING** this 22<sup>nd</sup> day of November, 2010, in accordance with the City Charter.

CITY OF LAMAR, COLORADO

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ROGER STAGNER, Mayor

ATTEST:

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LINDA WILLIAMS, City Clerk